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April 15, 2009

Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Sent Via Email [tegoscue@waterboards.ca.gov; cowens@waterboards.ca.gov]

Re: Comments on Revised Tentative Waste Discharge Requirements, Fact Sheet, and Cease and Desist Order– The Boeing Company, Santa Susana Field Laboratory, Canoga Park, CA, NPDES No. CA0001309, CI No. 6027

Dear Ms. Tracy Egoscue,

On behalf of Heal the Bay, we appreciate the opportunity to review and provide the following comments on the proposed *Revised Tentative Waste Discharge Requirements* (“Draft Permit”), *Fact Sheet, and Cease and Desist Order* (“Draft CDO”) for *The Boeing Company Santa Susana Field Laboratory* (“SSFL”). Heal the Bay is an environmental organization with over 13,000 members dedicated to improving water quality in Santa Monica Bay and Southern California coastal waters and watersheds. Heal the Bay has closely followed regulatory activity at the SSFL site for many years.

While we support a more natural approach to treatment to reduce both the mass loading and concentration of water quality constituents at Outfalls 008 and 009, we do have a few questions and concerns about the proposed revisions. In particular, we are concerned that extending the compliance timeline and reducing hard effluent limits to benchmarks is a major step backwards and is in conflict with the State Board’s Order (WQ 2006-0012) that denied a request for a stay of prescribed effluent limitations. In addition, we are concerned that no design storm is specified for the ENTs at Outfalls 008 and 009 in the Draft CDO. We also incorporate herein by reference the comments submitted by Heal the Bay on August 31, 2007, as a number of these comments are still a concern. This letter is also attached.

A three-year “grace period” with benchmarks instead of effluent limitations is unwarranted and contradicts State Board Order WQ 2006-0012.

The major issue that we see with this Draft CDO is temporary removal of effluent limitations for Outfalls 008 and 009. The Draft CDO states that “The Compliance for storm water runoff



discharges from Outfalls 008 and 009 from June 10, 2009, to June 26, 2012 shall utilize the final effluent limitations that appear in I.B.4. of Order R4- 2009-00XX as benchmarks. Exceedance of benchmarks triggers an evaluation of the BMPs in place with the potential for upgrading or replacing the BMPs (see Section II.C.7. of Order R4- 2009-00XX)” (Draft CDO at Page 8). However, the CDO adopted in 2007 (CDO R4-2007-0056) required compliance with final effluent limitations by of June 10, 2009 (at Page 10). Thus by allowing for benchmarks instead of effluent limits in the Draft CDO, the Regional Board is allowing three additional years of water quality standards exceedances. This action is unwarranted. The inclusion of numeric effluent limits for storm water discharges from the facility is appropriate and was upheld by the State Water Resources Control Board (“State Board”) on December 13, 2006 in State Board Order WQ 2006-0012. As upheld by the State Board, the Regional Board has full authority to establish effluent limits for discharges consisting entirely of storm water. The presumption under the Clean Water Act is that numeric effluent limits will be the tools used to limit the discharge of pollutants, particularly toxic ones. Further, the Ninth Circuit has expressly upheld the State’s authority under the Clean Water Act to establish numeric WQBELs for industrial storm water discharges. *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159. Thus, rather than merely establishing benchmarks for these outfalls, the Regional Board has full authority to establish numeric limits, including for toxic constituents in storm water, using the CTR. Therefore, we believe the final effluent limits should not be considered benchmarks and should be effective immediately.

Allowing for three years to complete the 13304 requirements and to implement ENTs does not appear justified. The Revised CDO gives a list of activities associated with the implementation of the 13304 Order, and then states that “[b]ased on the number of activities and the complexities of these activities, Regional Board concludes that a three year compliance schedule is the shortest time practicable” (Page 8 Finding 42). While we understand that the Permittee may need time to establish the ENTs, we question the three year compliance timeline issued. The current CDO (CDO 2007-0056) already calls for the development of a work plan that would evaluate BMPs capable of providing the required treatment to meet the final effluent limits, describe BMPs to be utilized, design the BMPs and develop a plan for BMP implementation, include a schedule for the installation of the BMPs at Outfalls 008 and 009, and include a schedule to evaluate BMPs’ performance. The time schedule for this work plan began November 1, 2007, and ends on June 10, 2009. Have none of these actions been started or completed to date? Also, from the list in the Draft CDO it is difficult to determine the progress of these activities and if time can be saved by working on these simultaneously. This information, perhaps in the form of a table or chart, would help the public understand the real need for the proposed extended compliance schedule.

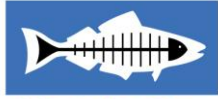
Moreover, both including benchmarks and extending the timeframe for compliance rewards a Permittee who has a history of non-compliance with waste discharge requirements. The



Permittee's discharge has chronically exceeded effluent limitations since 1998. The Permittee was already given an extension to comply with the previous Cease and Desist Order issued in 2007, which states, "Discharges from Outfalls 008 and 009 on June 10, 2009, and thereafter, shall comply with the final effluent limits that appear in I.B.4. of Order R4-2007-0055" (CDO R4-2007-0056 Page 10). However, the Permittee continues to exceed standards, as mentioned in the draft CDO when it states, "The Permittee has been discharging effluent that has chronically exceeded the effluent limitations for TCDD, heavy metals and other pollutants from 1998 through 2008" (CDO No. R4-2009-00XX at Page 6). In addition, extending the compliance schedule contradicts directives given to the Regional Board in Order WQ 2006-0012 issued by the State Water Resources Control Board, which "[d]irected the Regional Board to issue a Cease and Desist Order (CDO) with the shortest possible compliance schedule and interim effluent limitations, based on the effects of the Topanga Fire. The effective date of the CDO was to be January 19, 2006" (Revised Tentative CDO Finding 21 at Page 5). By continuing to extend the compliance schedule, the Regional Board is delaying progress. Instead the Regional Board should require compliance with the final effluent limitations immediately and should condense the schedule for implementing the 13304 activities.

The draft Permit should specify a design storm the ENTs will be required to capture and treat.

Within the text of the Draft CDO, no finding expresses the design storm set as design criteria for treatment by the proposed ENTs. The previous CDO R4-2007-0056 mentioned in finding 42, "The discharge from SSFL is currently primarily storm water runoff. The size of the site and the volume of storm water runoff generated presents challenges with treating the entire volume of rainfall. An estimate of the 85th percentile of the 1-year 24-hour storm event, the site specific "design storm" for the site resulted in a storm depth of 2.3 inches using the Los Angeles County Department of Public Works (LADWP) estimation models. The new BMPs implemented were designed to treat the storm water runoff generated by a storm depth of that size." However, the latest Draft CDO makes no effort to specify the size of storms ENTs will capture and treat. What is the ENT design goal? Since CDO R4-2007-0056 was issued, The Expert Panel concluded that the 85th percentile design storm is not sufficient for Outfalls 008 and 009, and suggest that treatment controls be designed for a larger storm. We believe that for critical source areas, the treatment controls should capture and treat 100% of the runoff volume from the 5 year storm. Any discharge over the design storm should be monitored, and a BMP enhancement plan should be developed for any exceedance of water quality standards. Requiring this design storm is critical for the development and sizing of BMPs, but it should not alleviate any water quality standard compliance obligations. The CDO should specify this design storm.



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As mentioned above, The Permittee has had ample time to develop BMPs necessary to attain compliance with final effluent limitations. Given the Permittee's record of non-compliance and ineffectiveness at previous efforts for compliance, the Regional Board should require the Permittee to immediately meet *final* effluent limits. In addition, the Draft CDO should specify a design storm for the ENTs at Outfalls 008 and 009.

Thank you for your consideration of these comments. If you have any questions, please contact us at 310-451-1500.

Sincerely,

Kirsten James, MESM
Water Quality Director

W. Susie Santilena, MS, E.I.T.
Water Quality Scientist